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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 935 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

JAKAB JASUB NADE

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Appearance:

1. Criminal Appeal No. 935 of 1992

MR KT DAVE, APP for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/09/2003

ORAL JUDGEMENT

1. The State of Gujarat has preferred this appeal u/S. 378 of the Code of Criminal Procedure

challenging the judgment and order of acquittal passed by the learned Chief Judicial Magistrate, Kutch at Bhuj in Summary Case No. 333/1988 dated 30th June, 1992.

2. Respondent i.e. original accused though served, has neither appeared in person nor through any advocate.

2.1. The case of the prosecution is that the Food Inspector attached to Bhuj Nagar Palika was on his usual round on 10th November, 1987. It was around 9.00 O'clock in the morning when he reached near Mandvi Octroi Naka. He saw respondent selling buffalo milk which was stored in a tin can. He approached the respondent and expressed his intention to purchase 660 m.l. of milk which was stored in a tin can. He approached the respondent and collected 660 m.l. of milk from the can after stirring it with the plunger. Initially the milk was collected in a jug and thereafter it was transmitted to 3 glass bottles in equal proportion. The Food Inspector thereafter added preservative as prescribed by the rules and closed the bottles by applying cock. The Food Inspector thereafter sealed and fastened the said bottles by following the procedure as prescribed in rules 14, 15 and 16 in Part-V of the Prevention of Food Adulteration Rules, 1955 (for short 'the PFA Rules'). After completing the procedure of collection of the samples, he despatched one bottle containing the sample milk to the Public Analyst at Rajkot on 10th November, 1987. He also despatched separately the memorandum and seal impression to the Public Analyst in accordance with the provisions of rule 17 of the PFA Rules. The remaining 2 bottles were despatched to the Local health Authority, Bhuj.

2.2. On 3rd December, 1987 the Food Inspector received report from the Public Analyst which was dated 26th November, 1987. According to the report, the sample did not conform to the standards prescribed for buffalo milk under the Prevention of Food Adulteration Act (for short 'the PFA Act') and PFA Rules and hence it was found to be adulterated. On receipt of the report, the Food Inspector despatched all the relevant papers alongwith the report of the Public Analyst to the Local Health Authority for obtaining the consent to prosecute the respondent as required u/S. 20 of the PFA Act. On receipt of the written consent from the concerned authority vide letter dated 19th December, 1987 the Food Inspector lodged complaint in the Court of the learned chief Judicial Magistrate against the respondent for committing offence made punishable under section 7 read

with section 16 of the PFA Act. He also despatched copy of the report alongwith copy of the complaint to the respondent intimating him that if he so desired he could request the learned Magistrate to send one sample to the Director of Central Food Laboratory for analysis. The respondent also received summons from the Court requiring him to remain present before it. In response to the summons, the respondent appeared and his plea was recorded by the learned Magistrate vide Exh. 9. He pleaded not guilty and the trial therefore, commenced in summary way.

3. At the trial, the Food Inspector examined himself to substantiate his case. One Kanaiyalal Amrutlal Kothari, who appears to have acted as a Panch at the time when the sample was collected and in whose presence the proceedings have been recorded by the Food Inspector is not examined.

3.1. The Food Inspector has deposed before the Court that on 10th November, 1987 at about 9.00 a.m. while he was on his usual round he saw respondent arriving there in a rickshaw near the Mandvi Octroi Naka. In the rickshaw 5 cans containing buffalo milk were kept. The said milk was meant for sale. The Food Inspector, therefore, revealed his identity and expressed his desire to collect sample from the said milk for the purpose of analysis. He opened the lid of one can and with the help of the plunger supplied by the respondent, he stirred the milk so as to have a representative sample. With the aid of the plunger he took out the milk and filled it in a jug, which according to him was dried and cleaned. He collected 660 M.L. of milk and thereafter he passed on a written notice as required under rule 12 of the PFA Rules regarding drawing of the sample for the purpose of analysis. He also paid price of the milk purchased by him and obtained a cash memo. He thereafter took out 3 glass bottles which were clean and dry. They were again cleaned from inside with an aid of a white piece of cloth and the Food Inspector filled the milk contained in jug in these bottles in 3 equal parts. He also added 18 drops of formalin as preservative. He thereafter closed the bottles by applying the cork tightly and also wrapped them and sealed them in accordance with the rules of Chapter V of PFA Rules. He has further stated that the proceedings have been reduced into writing in the presence of Amrutlal Kothari.

3.2. He has further stated that he sent one bottle containing sample milk to the laboratory of Public Analyst at Rajkot and he also sent copy of the memorandum

and seal impression to the public Analyst separately by Registered A.D. Post as per the requirement of rule 17. The report dated 26th November, 1987 of the Public Analyst was received by the Food Inspector on 3rd December, 1987 and having found that the sample was adulterated, he forwarded all the relevant papers alongwith the analysis report to the Local Health Authority for obtaining its written consent in accordance with section 20 of the PFA Act. It is further stated that on receipt of the consent, the complaint was lodged in the Court of the learned Chief Judicial Magistrate, Kutch at Bhuj and copy of the complaint alongwith copy of the report of the Public Analyst were despatched to the respondent to enable him to make a request, if he so desired, to the learned Magistrate to send one sample to the Director of Central Food Laboratory for analysis. During the course of evidence, the Food Inspector has produced on record necessary documentary evidence in the form of the cash memo, notice, registered A.D. slips, the report of the Public Analyst, etc. In the cross-examination he has stated that he did not remember that before collecting sample of this case whether he had collected the sample and whether it was of cow milk or the buffalo milk. He has further stated that for cleaning plunger and steel jug he had brought water from the hotel situated nearby. He was however, no able to give any details about the said hotel. He has further stated in the cross-examination that on the can containing milk it was not written that it was buffalo milk nor it was written that the milk was meant for sale. He has further stated that for drawing the sample he had not used the plunger but had drawn it with the aid of a measure which had a handle of about 2 ft. He has also admitted that so far cleaning the vessel with a clean white piece of cloth is concerned, that fact was not mentioned either in the complaint or in the panchmana and that he was stating it before the Court for the first time.

3.3. The Food Inspector closed his evidence and thereafter the learned Magistrate recorded the further statement of respondent u/S. 313 of the Code of Criminal Procedure. It appears that his defence was that of general denial.

4. At the end of the trial, the learned Magistrate came to the conclusion that certain required procedure was not followed by the Food Inspector and in particular while transmitting the sample from the jug to the bottles, the sample was not stirred and, therefore, it could not be called a homogeneous sample. It is this

judgment which is under challenge in this appeal.

5. Mr. K.T. Dave, Ld. APP has assailed the judgment by submitting that the view of the learned Magistrate is absolutely erroneous in asmuch as the Food Inspector in his evidence has clearly stated that before he drew the sample from the can he had stirred it with the measure supplied by the respondent and thereafter the quantity of 660 M.L. was collected in the jug. He has, therefore, submitted that the sample collected by the Food Inspector was homogeneous and it was fit for analysis. He has further submitted that when the Public Analyst has found the sample to be adulterated the learned Magistrate ought to have accepted the report and he ought to have convicted the respondent for offences u/S. 7 read with section 16 of the PFA Act.

6. I have carefully gone through the entire record of the case including the evidence of the Food Inspector. If the evidence and in particular the cross-examination is perused carefully, it clearly appears that the Food Inspector, while drawing the sample from the can, has not observed the norms meant for collecting such sample i.e. samples regarding cow and buffalo milk. According to him, the measure and the steel jug in which the milk was collected were cleaned by him with water which was brought from the nearby hotel. He has further stated that the said articles were also cleaned with a white piece of cloth. However, neither in the panchnama which was also simultaneously recorded when the sample was being collected nor in the complaint these facts have been mentioned. The evidence on the aspect whether the vessel in which the sample was initially collected was properly cleaned so as not to adversely affect the milk contained in it is absolutely lacking in this case. Whatever the Food Inspector has stated in his evidence appears to be a subsequent improvement. If that evidence is not available, the respondent should get a benefit thereof. So far Mr. Dave's aforesaid submission is concerned, it is true that before drawing the sample from the can the Food Inspector had properly stirred it so as to have a representative sample. There is some substance in it. However, when on the point of the utensils in which the sample was collected, whether they were cleaned is doubtful and not satisfactory, it is not necessary for me to examine the merits of that submission in detail. The respondent should get benefit of the doubt on that count.

The result is that this appeal has no merits and it is dismissed.

[ AKSHAY H. MEHTA, J.]

* Pansala.